

**COURT AUTHORIZED NOTICE OF
PENDENCY OF LAWSUIT**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**If you worked as a server, bartender, busser, runner, bar
back, hostess or Daisy Duke for:**

Johnny Utah 51 LLC
d/b/a Johnny Utah's

**between June 17, 2011, and the present,
please read this notice.**

A collective action lawsuit may affect your legal rights.

This is a court-authorized notice. This is not a solicitation from a lawyer.

The purpose of this Notice is to advise you of a lawsuit brought under the federal Fair Labor Standards Act ("FLSA") that has been filed against the above listed company and to advise you of your legal rights in connection with the lawsuit.

Direct Tel: (212) 736-5588
Email: jchristensen@lawicm.com or
johnnyutahsclassaction@lawicb.com
www.lawicm.com

1. Why did I get this notice?

You are getting this notice because Johnny Utah's records show that you were employed as a server, bartender, busser, runner, bar back, hostess or Daisy Duke during the time period of June 17, 2011 to the present. A lawsuit has been brought against Johny Utah 51 LLC, D/B/A Johnny Utah's, John Sullivan, Thomas Casabona, and J.R. Lozada claiming that employees should have been paid minimum wages rather than tipped minimum wage, overtime wages, spread of hours pay and proper distribution of the tip pool. The Court has authorized this Notice to be sent to advise you about the lawsuit and to provide you with a time period to choose whether or not to join this lawsuit. Johnny Utah's, John Sullivan, Thomas Casabona and J.R. Lozada deny any wrongdoing and a trial may be necessary to decide whether the claims being made against Johnny Utah's, John Sullivan, Thomas Casabona and J.R. Lozada are correct. The Honorable Jesse M. Furman, United States District Court Judge in the Southern District of New York, is overseeing this collective action. The lawsuit is known as *Stephanie Sanz, et al. v. Johny Utah 51, LLC, et al.*, 14-cv-4380 (JMF).

2. What is this lawsuit about?

Plaintiffs are former service employees of Johnny Utah's, a western-themed restaurant and bar located in Rockefeller Center, who commenced this action to recover damages against the Defendants, the owners and managers of Johnny Utah's, for the alleged regular and systemic denial of Plaintiffs' minimum wages, overtime wages, spread of hours pay, and proper distributions of the tip pool, experienced by all servers, bartenders, bussers, runners, bar backs, hostesses and Daisy Dukes girls (the "shots girls.")

Plaintiffs brought the federal wage and hour claims on behalf of themselves and other similarly situated current and former employees who elect to opt in to the action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§201 *et. seq.* ("FLSA"), and specifically the collective action provision of 29 U.S.C. §216(b), who worked at Johnny Utah's between June 17, 2011, through the resolution of this action (the "Collective Action Class").

This lawsuit is about whether servers, bartenders, bussers, runners, bar backs, hostesses or Daisy Dukes should have been paid minimum wages rather than tipped minimum wage,

overtime wages for any hours worked in excess of 40 hours per week, spread of hours pay and a determination of how the tip pool was distributed.

3. **What is a collective action and who is involved?**

In a collective action lawsuit, one or more persons who have similar claims can bring a lawsuit that includes others who have similar claims. Initially, all servers, bartenders, bussers, runners, bar backs, hostesses or Daisy Dukes, who worked at Johnny Utah's during the time period of June 17, 2011 to the present, who choose to participate in the case are part of a "Collective" or "Collective Action Members." These specific current and former employees who brought this lawsuit — and all of the Collective Action Members — are called the Plaintiffs. The Plaintiffs have sued Johnny Utah 51 LLC, D/B/A Johnny Utah's, John Sullivan, Thomas Casabona, J.R. Lozada — collectively referred to as Johnny Utah's — and are called the Defendants. Discovery is the process where information is exchanged between Plaintiffs' and Defendants' lawyers. One court, in the Southern District of New York, resolves the issues for everyone who decides to join the case.

4. **Why is this lawsuit a Collective Action?**

The Court has conditionally authorized this case to proceed as a collective action under § 216(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b). A conditional authorization is not a final determination of whether the Plaintiffs have a valid claim, or even whether or not a collective or class action will be allowed to continue. At the conclusion of discovery, after the facts and circumstances underlying the legal issues are fully revealed, the Court may decertify this preliminary finding and determine your circumstances are different from the Plaintiffs' and require you to proceed on your own.

5. **What is Johnny Utah's position?**

It is Johnny Utah's position that all employees punched in and out for every shift worked, as pleaded in the Amended Complaint, and so there are accurate records reflecting each employee's hours worked. If there are discrepancies in the amount due any employee regarding overtime, the records will accurately reflect any negligent mistake. Each employee who worked for tips received the legal tip earned hourly rate and each employee who did not receive tips received the legal minimum wage. Johnny Utah's denies wrongdoing concerning any allegations about tip pool collection sharing. The Point of Service ("POS") system is central to the operation of most restaurants because each bartender or server must be punched in on the time clock in order to utilize the cash register system to provide service to patrons. The POS requires both bartenders and servers to be punched in on the time clock as a prerequisite to utilizing the POS, therefore the POS records accurately reflects the hours worked by each bartender and server.

If the Court agrees with Johnny Utah's, the claims of the all servers, bartenders, bussers, runners, bar back, hostesses or Daisy Dukes who worked at Johnny Utah's during the time period of June 17, 2011 to the present, who brought or joined in this lawsuit will be dismissed with prejudice, and they will not receive any money from this lawsuit.

6. **Has the Court decided who is right?**

The Court has not decided whether Johnny Utah's or the Plaintiffs are correct. By establishing the Collective and issuing the Notice, the Court is not suggesting that the Plaintiffs will win or lose the case.

7. **What are the Plaintiffs asking for?**

Plaintiffs are seeking to recover damages that they allege resulted from Johnny Utah's pay practices and policies affecting all servers, bartenders, bussers, runners, bar backs, hostesses or Daisy Dukes who worked at Johnny Utah's from June 17, 2011 to the present. Plaintiffs also are seeking recovery of attorneys' fees and costs.

8. **Can I join this lawsuit?**

To be eligible to join this lawsuit, you must have worked for Johnny Utah's as a server, bartender, busser, runner, bar back, hostess or Daisy Duke at any time from June 17, 2011 to the present.

9. **I'm still not sure if I am included.**

If you are still not sure whether you are included, you can get free help by calling or writing the lawyers in this case, at the phone numbers or addresses listed below. Please do **not** contact the Clerk of the Court with questions involving this lawsuit.

10. **What happens if I join the lawsuit?**

If you choose to join this lawsuit, you will be bound by any ruling, settlement or judgment, whether favorable or unfavorable. You will also share in any proceeds from a settlement or judgment favorable to the Collective. By joining this lawsuit, you designate the named Plaintiffs and their lawyers as your representatives, and to the fullest extent possible, you designate the named Plaintiffs to make decisions on your behalf concerning the case, the method and manner of conducting the case, the entering of an agreement with Plaintiff counsel regarding payment of attorneys' fees and court costs, the approval of settlements, and all other matters pertaining to this lawsuit. Decisions made and agreements entered into by the named Plaintiffs will be binding on you if you join the lawsuit. While this suit is pending, you may be asked to provide documents or information relating to your employment, or otherwise participate in written and/or oral discovery proceedings and/or in a trial of this matter.

11. **What happens if I do nothing at all?**

By doing nothing, you will not be included in this collective action. If you choose not to join this lawsuit, you will not be affected by any ruling, judgment or settlement rendered

in this case, whether favorable or unfavorable. You will not be entitled to share any amounts recovered by Plaintiffs as part of this lawsuit. You also will be free to independently retain your own counsel and file your own lawsuit. You should be aware that your federal wage and hour claims are limited by a two or three-year statute of limitations. Delay in joining this action, proceeding separately, may result in part or all of your claims expiring as a matter of law. If you proceed separately, you may also have to pay your own lawyer.

12. Can I participate in this lawsuit even though, due to my immigration status, I was an undocumented worker?

Yes. Your immigration status does not affect your entitlement to recover back wages or to participate in this lawsuit. You have a right to participate in this action even if you are an undocumented immigrant.

13. Tax implications of participating in this lawsuit.

The Plaintiffs in this case are not seeking any determination of the servers', bartenders', bussers', runners', bar backs', hostess' or Daisy Dukes' tax status. The lawyers involved in this lawsuit do not give tax advice. Your tax advisor is your best source of information concerning your own individual circumstances and the effect, if any, that the outcome of this case may have on your tax status.

14. If I am presently employed at Johnny Utah's can the Defendants retaliate against me or fire me if I join the lawsuit?

It is a violation of federal law for the Defendants to fire, discipline, or in any manner discriminate or retaliate against you for taking part in this case.

If you believe that you have been penalized, discriminated against, or disciplined in any way as a result of your receiving this notification, considering whether to join this lawsuit, discuss the lawsuit with others, or actually joining this lawsuit, contact Plaintiffs' lawyers right away.

15. How do I ask the Court to include me in the case?

Enclosed is a form called "Consent to Join." If you choose to join this lawsuit, it is extremely important that you read, sign, and promptly return the Consent to Join Form. If you intend to retain your own lawyer or to represent yourself (without the assistance of a lawyer), you should indicate this on the Consent Form. An addressed and postage paid envelope is enclosed for your convenience. Should the enclosed envelope be lost or misplaced, the Consent to Join Form must be sent to:

Clerk of the Court
U.S. District Court for the Southern District of New York
500 Pearl Street, New York, NY 10007

The signed Consent to Join form must be postmarked by **November 17, 2014**. If your signed Consent to Join Form is not postmarked by November 17, 2014, you will not participate in this lawsuit, you will not share in a monetary recovery, and you will not be bound by any settlement or judgment.

16. Do I have a lawyer in this case?

If you choose to join this lawsuit, and do not hire your own lawyer, you will be represented by: Jeanne Christensen, Imbesi Christensen, 450 Seventh Avenue, Suite 1408, New York, NY 10123. You do not have to be represented by that lawyer, however, and may instead hire another attorney of your choosing or represent yourself (without the assistance of a lawyer). If you intend to retain your own lawyer or to represent yourself, you should indicate this on the Consent Form. If you do hire another attorney, you may be responsible for paying that attorney.

18. How will the lawyers be paid?

You will not be required to pay any attorneys' fees or costs out of your own pocket. The named Plaintiffs have entered into contingency fee agreements with Plaintiffs' attorneys. If you join the lawsuit and Plaintiffs do not win, there will be no attorneys' fees or costs chargeable to you. In the event there is a recovery, the fee agreements entitle Plaintiffs' counsel to apply for one-third of any settlement obtained or money judgment entered in favor of all members of the class or the actual value of the time they spend on the case, whichever is greater. The Court may be asked to approve the attorneys' fees. The fees may be part of a settlement obtained or money judgment entered in favor of Plaintiffs, or may be ordered by the Court to be separately paid by the Defendants, or may be a combination of the two.

You may review the full text of Plaintiffs' Complaint and Defendants' Answer by visiting the office of the Clerk of Court for the United States District for the Southern District of New York, 500 Pearl Street, New York, N.Y. 10007, on any weekday between the hours of 8:30 a.m. and 4:30 p.m., and requesting the file for the case (*Sanz v. Johnny Utah 51 LLC d/b/a Johnny Utah's, et al.*, Case No. 14-cv-4380).

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE FEDERAL DISTRICT COURT, HONORABLE JUDGE JESSE M. FURMAN. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFF'S CLAIMS OR OF THE DEFENDANTS' DEFENSES.

IF YOU HAVE ANY QUESTIONS WITH RESPECT TO THIS LAWSUIT, YOU MAY CONTACT

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**PLEASE DO NOT CONTACT OR CALL THE COURT OR THE COURT CLERK
WITH QUESTIONS REGARDING THIS LAWSUIT.**